XI-HC—78

(19)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक M.A.C. 1061 सन् 2007

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

HIGH COURT OF CHHATTISGARH, BILASPUR

Misc. Appeal (C) No.1061 of 2007

Appellants	1.	Godawari Bai, Wd/o Dukalu Ram Netam, aged about 49 years.
	2.	Narad, s/o late Dukalu Ram, aged about 27 years Both residents of village Karetha, Tahsil and District Dhamtari (C.G)
		Versus
RESPONDENTS	1	Swarn Singh, s/o Banwari Lal, aged about 35 years
	2	Mahendra Singh, s/o Sukhit Ram, both residents of Chokranala, Raipur Tahsil and District Raipur (C.G)
	3	The New India Insurance Company Limited, Thakkar Bhawan, G.E. Road, Bhilai, Distt. Durg (C.G).

MISC. APPEAL (C) UNDER SECTION 173 OF MOTOR VEHICLES ACT

Appearance:

Shri Vivek Rathore, counsel for the appellants.

Shri Shrikumar Agrawal, Sr. advocate with Shri A.K. Gupta, counsel for respondent no.3.

DB: Hon'ble Shri L.C. Bhadoo &
Hon'ble Shri Sunil Kumar Sinha, J, J.

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मामला क्रमांक MAC-1061/07 सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

ORAL ORDER
(09.10.2007)

L.C.Bhadoo, J,

The appellants who are wife and son of lat~ Shri Dukaluram have preferred this appeal u/s 173 of th motor Vehicles Act 1988 for enhancement of the compensation amount. At the time of accident Dukaluram was working as a daily wager in the irrigation department and on the fateful day i.e. 09.7.2004 in the morning he went to his duty place by Cycle. While he was returning to his home in the evening, on the way when he reached to the square of Shanti Colony, Dhamtari, respondent no.1 who was driving the offending vehicle No.CG-04-ZC-6107 in rash and negligent manner, dashed against the Cycle of Dukaluram, as a result of which, Dukaluram sustained injuries and died spontaneously. The matter was reported in the Police Station Dhamtari, upon which, a crime No.412/2004 was registered. The appellants herein filed a claim petition before the Addl. Accident Claims Tribunal, Dhamtari, which was registered as 546/2004.

Both the parties were allowed to adduce their evidence and after hearing counsel for the parties, the learned Tribunal, based on the evidence of department, assessed the income of Dukaluram as Rs. 2147/- per month and after deducting 1/3rd as personal expenses, remaining 1/3rd part i.e., Rs.1400/- was considered as monthly dependency and thus

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

assessed the annual dependency to the tune of Rs.16800/-. Further, the Tribunal held that as per the post mortem report the age of the deceased Dukaluram was 55 years, therefore the Tribunal applied the multiplier of 8 and awarded the compensation to the tune of Rs.1,34,4000/-. In addition to that, Rs.5000/- was also awarded for funeral expenses and thereby awarded a total compensation to the tune of Rs.1,39,400/- along-with interest 6% p.a.

Learned counsel for the appellant argued that at the time of accident, Dukaluram had not completed the 55 years of age and he was below 55 years, therefore, the multiplier of 11 ought to have been applied. The certified copies of the statement of witnesses of the claimants are available with the counsel for the appellants and a perusal of these statements shows that no material has been produced before the Tribunal which establishes that at the time of accident, the age of deceased was below 55 years and 55 years of age has been assessed by the Tribunal based on the postmortem report. Therefore, we are of the opinion that correct age has been assessed by the Tribunal.

Learned counsel for the appellants submitted that the tribunal has not awarded any amount under the heads of loss of estate, love and affection and loss of consortium.

On the other hand, Shri Shrikumar Agrawal, counsel for respondent no.3 argued that just and reasonable

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -4-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

compensation has been awarded by the Tribunal and the appellants are not entitled for any enhancement.

Having heard counsel for the parties and considering the fact that under the heads of loss of estate, love and affection and loss of consortium nothing has been awarded, therefore, we are of the considered opinion that the appellants are entitled for Rs.5000/- under each head i.e., Rs.5000/- for loss of estate, Rs.5000/-for love and affection and Rs.5000/- under the head of loss of consortium.

Accordingly, the appeal is partly allowed. In addition to the compensation amount already awarded by the tribunal, the appellants shall be entitled to Rs.15,000/- more and the enhanced amount shall carry 6% interest from the date of filing of the application.

Accordingly, this appeal stands finally disposed of.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Sunil Kumar Sinha
Judge

GRPRJ — FS/246— 2/2007 — 50,000.